

## § 239.56

(2) To obtain court review of the action, the aggrieved person must file a written petition requesting that the court modify, terminate, or set aside the final Board action. The aggrieved person must file the petition with the court within the later of 30 days after the Board publishes notice of its final action in the FEDERAL REGISTER or 30 days after the mutual holding company mails the proxy statement to its members under § 239.56(c).

### § 239.56 Vote by members.

#### (a) *Mutual member approval of the plan of conversion*

(1) After the Board approves the plan of conversion, the mutual holding company must submit the plan of conversion to its members for approval. The mutual holding company must obtain this approval at a meeting of its members.

(2) The members must approve the plan of conversion by a majority of the total outstanding votes.

(3) The members may vote in person or by proxy.

(4) The mutual holding company may notify eligible account holders or supplemental eligible account holders who are not voting members of the proposed conversion. The mutual holding company may include only the information in § 239.54(c) in the notice.

(b) *Eligibility to vote for the plan of conversion.* The mutual holding company determines members' eligibility to vote by setting a voting record date. The mutual holding company must set a voting record date that is not more than 60 days nor less than 20 days before the meeting.

#### (c) *Notifying members of the meeting.*

(1) The mutual holding company must notify the members of the meeting to consider the conversion by sending the members a proxy statement.

(2) The mutual holding company must notify its members 20 to 45 days before the meeting.

(3) The mutual holding company must also notify each beneficial holder of an account at any subsidiary savings association held in a fiduciary capacity:

(i) If the subsidiary savings association is a federal association and the name of the beneficial holder is dis-

## 12 CFR Ch. II (1-1-14 Edition)

closed on the records of the subsidiary savings association; or

(ii) If the subsidiary savings association is a state-chartered association and the beneficial holder possesses voting rights under state law.

#### (d) *Submissions to the Board after the members' meeting.*

(1) Promptly after the members' meeting, the mutual holding company must file all of the following information with the appropriate Reserve Bank:

(i) A certified copy of each adopted resolution on the conversion.

(ii) The total votes eligible to be cast.

(iii) The total votes represented in person or by proxy.

(iv) The total votes cast in favor of and against each matter.

(v) The percentage of votes necessary to approve each matter.

(vi) An opinion of counsel that the mutual holding company conducted the members' meeting in compliance with all applicable state or federal laws and regulations.

(2) Promptly after completion of the conversion, the mutual holding company must submit to the appropriate Reserve Bank an opinion of counsel that the mutual holding company has complied with all laws applicable to the conversion.

### § 239.57 Proxy solicitation.

(a) *Applicability of proxy solicitation provisions.* (1) The mutual holding company must comply with these proxy solicitation provisions when the mutual holding company provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(2) Members of the mutual holding company must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to paragraph (f) of this section except where:

(i) The member solicits 50 people or fewer and does not solicit proxies on behalf of the mutual holding company; or

(ii) The member solicits proxies through newspaper advertisements

after the board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

(A) The name of the mutual holding company;

(B) The reason for the advertisement;

(C) The proposal or proposals to be voted upon;

(D) Where a member may obtain a copy of the proxy solicitation material; and

(E) A request for the members of the mutual holding company to vote at the meeting.

(b) *Form of proxy.* The form of proxy must include all of the following:

(1) A statement in bold face type stating that management is soliciting the proxy.

(2) Blank spaces where the member must date and sign the proxy.

(3) Clear and impartial identification of each matter or group of related matters that members will vote upon. It must include any proposed charitable contribution as an item to be voted on separately.

(4) The phrase "Revocable Proxy" in bold face type (at least 18 point).

(5) A description of any charter or state law requirement that restricts or conditions votes by proxy.

(6) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(7) The date, time, and the place of the meeting, when available.

(8) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(9) A statement that management will vote the proxy in accordance with the member's specifications.

(10) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

(c) *Permissible use of proxies.* (1) The mutual holding company may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the mutual holding company may vote proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

(2) The mutual holding company may vote a proxy obtained under this subpart on matters that are incidental to the conduct of the meeting. The mutual holding company or its management may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on the plan of conversion.

(d) *Proxy statement requirements.* (1) *Content requirements.* The mutual holding company must prepare the proxy statement in compliance with this subpart and Form PS. The mutual holding company may obtain Form PS from the appropriate Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(2) *Other requirements.*

(i) The Board will review the proxy solicitation material in its review of the application for conversion.

(ii) The mutual holding company must provide a written proxy statement to the members before or at the same time the mutual holding company provides any other soliciting material. The mutual holding company must mail proxy solicitation material to the members no later than ten days after the Board approves the conversion.

(e) *Filing revised proxy materials.* (1) The mutual holding company must file revised proxy materials as an amendment to the application for conversion.

(2) To revise the proxy solicitation materials, the mutual holding company must file:

(i) Revised proxy materials as required by Form PS;

(ii) Revised form of proxy, if applicable; and

(iii) Any additional proxy solicitation material subject to paragraph (d) of this section.

(3) The mutual holding company must clearly indicate changes from the prior filing.

(4) The mutual holding company must file a definitive copy of all proxy solicitation material, in the form in which the mutual holding company furnishes the material to the members. The mutual holding company must file no later than the date that it sends or gives the proxy solicitation material to

the members. The mutual holding company must indicate the date that it plans to release the materials.

(5) Unless the Board requests the mutual holding company to do so, the mutual holding company does not have to file copies of replies to inquiries from the members or copies of communications that merely request members to sign and return proxy forms.

(f) *Mailing proxy solicitation material.*

(1) The mutual holding company must mail the member's proxy solicitation material if:

(i) The board of directors adopted a plan of conversion;

(ii) A member requests in writing that the mutual holding company mail the proxy solicitation material; and

(iii) The member agrees to defray reasonable expenses of the mutual holding company.

(2) As soon as practicable after the mutual holding company receives a request under paragraph (f)(1) of this section, the mutual holding company must mail or otherwise furnish the following information to the member:

(i) The approximate number of members that the mutual holding company solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(ii) The estimated cost of mailing the proxy solicitation material for the member.

(3) The mutual holding company must mail proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to the mutual holding company.

(4) The mutual holding company is not responsible for the content of a member's proxy solicitation material.

(5) A member may furnish other members its own proxy solicitation material, subject to the rules in this section.

(g) *Prohibited solicitations.* (1) False or misleading statements. (i) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(A) Is false or misleading with respect to any material fact;

(B) Omits any material fact that is necessary to make the statements not false or misleading; or

(C) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(ii) No one may represent or imply that the Board determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(2) Other prohibited solicitations. No person may solicit:

(i) An undated or post-dated proxy;

(ii) A proxy that states it will be dated after the date it is signed by a member;

(iii) A proxy that is not revocable at will by the member; or

(iv) A proxy that is part of another document or instrument.

(3) If a solicitation violates this section, the Board may require remedial measures, including:

(i) Correction of the violation by a retraction and a new solicitation;

(ii) Rescheduling the members' meeting; or

(iii) Any other actions necessary to ensure a fair vote.

(4) The Board may also bring an enforcement action against the violator for violations of this section.

(h) *Re-soliciting proxies.* If the mutual holding company amends its application for conversion, the Board may require it to re-solicit proxies for the members' meeting as a condition of approval of the amendment.

#### § 239.58 Offering circular.

(a) *Filing requirements.* (1) The mutual holding company must prepare and file the offering circular with the appropriate Reserve Bank in compliance with this subpart and Form OC. The mutual holding company may obtain Form OC from the Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(2) The mutual holding company must condition the stock offering upon member approval of the plan of conversion.